

Township Of Chatham Zoning Board of Adjustment

Reorganization/Regular Meeting

January 22, 2015

Mr. Vivona called the Reorganization Meeting to Order at 7:30 P.M with the reading of the Open Public Meetings Act

Mr. Shaw administrated the Oath of Office to: Mr. Styple, Mr. McCaffrey(Alt.1), Mr. Hyland (Alt.2)

Roll call:

Mr. Tony Vivona	Mrs. Kathryn Surmay Kenny	Mr. William Styple
Mr. Richard Williams	Mr. McCaffrey, Alt 1	Mr. Hyland, Alt 2

Absent: Mr. Weston, Mrs. Romano

Reorganization of the Board

Mr. Shaw - next order of Business is election of Temporary Chairperson for the reorganization meeting.

A motion was made by Mr. Williams seconded by Mr. Vivona to appoint Mrs. Kenny as Temporary Chairperson. All in favor.

Mrs. Kenny asked for a nomination for Chairman of the Board.

A motion was made by Mrs. Kenny seconded by Mr. Williams to appoint Mr. Vivona as Chairman. All in favor.

Mrs. Kenny then asked for a nomination for Vice Chairperson.

Mrs. Kenny nominated Mr. Weston as Vice Chairman which was seconded by Mr. Williams
All in favor

Resolutions for Board Appointments:

Motions made and seconded to approve the following Resolutions

Roll Call: Mr. Vivona, Mr. Williams, Mr. Styple, Mr. Hyland, Mrs. Kenny

- All in Favor

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| • Board Counsel | Stephen Shaw |
| • Consultant Engineer | John Ruschke, Hatch Mott McDonald |
| • Planning Consultant | Robert Michaels |
| • Board Secretary | Kali Tsimboukis |
| • Board/Recording Secretary | Mary Ann Fasano |
| • Establishing Meeting Schedule | |
| • Designating Newspaper | Chatham Courier and
Morris County Daily record. |

Minutes: December 18, 2014 - Motion to accept the minutes as submitted was made by Mrs. Kenny, seconded by Mr. Williams. All in Favor

Memorialization:

Chatham Day School
700 Shunpike Road
Block: 135 Lot: 1 & 9.

Calendar BOA 14-135-1&9

A motion was made by Mr. Williams seconded by Mr. Style to approve this Resolution of Memorialization as presented.

Roll Call: Mr. Vivona, Mr. Williams, Mr. Style, Mrs. Kenny - All in favor

Mr. & Mrs Dalphe

27 Falmouth Road

Block: 89 Lot: 10

Calendar BOA 14-89-10

A motion was made by Mr. Williams seconded by Mr. Style to approve this Resolution of Memorialization as corrected.

Roll Call: Mr. Vivona, Mr. Williams, Mr. Style - All in favor

Mr. & Mrs. Fuller

769 Shunpike Road

Block 144 Lot 20

Calendar BOA 14-144-20

A motion was made by Mr. Williams seconded by Mr. Style to approve this Resolution of Memorialization as corrected.

Roll Call: Mr. Vivona, Mr. Williams, Mr. Style, Mrs. Kenny - All in favor

Hearings:

Mr. & Mrs. McWilliams

34 Edgewood Road

Block: 92 Lot: 15

Calendar BOA 14-92-15

Site Visit Report read into the records.

Brian Siegel, Architect

Ann McWilliams, Home Owner

Alex McWilliams, Home Owner

Mr. Vivona explained to the members who were not present at the site inspection that the lot was extremely tight, possibly 25% smaller than the allowable. He found that the easement actually caused the need for the variance. Personally he felt the project was not asking for a lot due to the size of the property. He asked if they were able to get in touch with the Township Arborist.

Mr. Siegel said they had not but they will do so as soon as possible.

Mrs. Kenny questioned why the suggestion had been made for the pruning of the trees.

Mr. Vivona explained that there were two trees one of which is on Township property and the other on the neighbors. The lot is so tight it was felt that it would be smarter to address this problem before construction started.

Mr. Shaw asked how Mr. Siegel would describe the variance relief requested.

Mr. Siegel said there were situations regarding setbacks. We are trying to mitigate the coverage issues. We did not think the 75 ft. would be an impact. A neighbor had testified that what was proposed would not be a detriment to her property. What is being requested is consistent with the other homes in the neighborhood.

Mr. Vivona asked for questions or comments from the Board/Public. None Heard.

Mr. Vivona then asked for a motion to accept the application. Mr. Williams moved to approve the application as presented. Mr. Styple seconded.

Roll Call: Mr. Hyland, Mr. Vivona, Mr. Williams, Mr. Styple, Mrs. Kenny - All in favor

Mr. Vivona advised the Resolution would be ready for the next meeting.

Dunning/Penizotto,

Calendar BOA 14—48.17-129.01

317 Green Village Rd.

Block: 48.17 Lot: 129.01.

Mr. Vivona explained the Board process and advised that a site visit would be scheduled for February 7th at 9 a.m.

Sworn: Anthony Penizotto, Ms. Dunning, Applicants
James Peter Kokkalis, Architect

Ms. Dunning said they had a small addition on the side that was built in the 70's. We need a kitchen now and want to put the master bedroom over it.

Mr. Vivona asked if there were any exhibits.

Mr. Kokkalis said as mentioned by Ms. Dunning this is a small colonial and the addition on the side of the house would be to add a master bedroom over the existing structure.

Mr. Vivona noted that all the construction would be vertical (other than the deck in the back). He asked if any foundation work had to be done and was advised there was none. Mr. Vivona asked if there would be any additional drainage due to the roof line and was told it would tie in with what presently exists (ground/pits).

Mrs. Kenny asked if there was a current picture of the structure/property. There were none.

Mr. Kokkalis said variances were because of pre-existing conditions.

Mr. Vivona – to clarify – the little bump out to the back is attached and you are just building over it. The deck will be inside of the bump out.

Mr. Kokkalis noted that the plan shows a small bump out with a stair directly behind the addition. He referred to the floor plan submitted and described what existed and proposed. You won't see the deck from the street.

Mrs. Kenny questioned the siding? Are you going to match to the existing or are you going to change it.

Mr. Kokkalis said they would be changing the whole house to clap board

Mr. Vivona said as there was nothing else at this point he looked forward to seeing them at the site inspection on February 7th at 9 a.m. and again at the February 19th Regular Meeting .

Mr. & Mrs. Treacy

3 Glenmere Drive

Block: 48.01 Lot: 12

Calendar BOA 14-48.01-12

Mrs. Kenny stepped down as she lives in close proximity of the property in question.

Mrs. Tracey, applicant, Sworn in

Ms. Hoffman, Hoffman Architects, Summit, NJ – Sworn in

Ms. Hoffman said the applicants are requesting to add portico to the house. We have updated the survey for accuracy A12. The portico is 133 ft. over what is permitted. We feel we are asking for something reasonable. There is not detriment to the public good. We feel there is an advantage to the adjacent properties because we are enhancing this property. We will also be doing so other cosmetics. Referring to sheet 5 (A13 – A14) the portico itself with a roof is nine ft. long. The only other thing we would need is a retro active variance for the shed that was constructed which was done under a separate permit. It was issued before we even started on this project. It was installed before we made our original application.. When we indicate the dimensions of that shed to the property line we did not know that the town wanted you to measure from the closest corner to the property line. The contractor measured to the furthest corner to the back so it doesn't conform to the required 15 ft. setback – it is 10 ft. The shed is 9 x 11. That is reflected on the revised survey (impervious coverage). It is set on concrete block with gravel underneath. There have been no complaints about it.

Mr. Vivona asked if there were steps now on the front.

Ms. Hoffman thought they may make the stoop a little wider and steps will remain.

Mr. Vivona asked for questions from the Board/Public. None heard. He advised the applicants that a site inspection will be scheduled for February 7th around 9:30 a.m.

James & Cheryl Brill

403 Green Village Road

Block: 144 Lot: 48 & Block: 48.18 Lot: 140,142,&143.

Calendar BOA 13-48.18-140

Attorney: James Weber

Mr. Weber noted that this was originally Harsch Farm. We have been before this Board several times over the last 25 years. Even before then he believed the original green houses had been brought before this board. The Board has reviewed and approved the replacement greenhouses; the storm water management; the improvement in the parking lots. The application before the board is an amendment of a prior approval where the Brills are renovating and updating a 205 yr. old farm house. The circumstances have changed. The change in regard to the site plan is shown on the site plan amendment. It is really an elimination of the previously approved restrooms. The benefit from the engineering is that it is a shorter run to the septic field and from the Brill's perspective – when they demolished the old garage it opened it up so it is more aesthetically pleasing. That is the preliminary/final site plan that is being requested of the Board. No variances are associated with that. Likewise the Brill's own Lot 142, 143 on Block 48.18 and lot 48 of Block 144 (across the street). These were originally farmland assessed. In 2012 we got a new tax assessor who reversed the prior assessment. We went to the Morris County Court House and we were presenting all the information required. Carl Woodward came up and told me of a farming ordinance in town and suggested we put things on hold and go back to the Board. In terms of the proposal with regard to the farm ordinance (Market Farming Ordinance) there will be no changes to the operations. Re: Block 144 Lot 48 there are wetlands, transitions areas and setbacks from dedicated water ways. With regard to lots 142, 143 that is incorporated into the permitted as a conditional use for the variance requested. We need the variances from the conditions, not necessarily the use. The Board has to look at whether or not the site will accommodate those variances. The variances relate to keeping farm animals (3 donkeys) between 143 and 144. He would like to keep the animals. The other aspect was the farming ordinance – does it focus on raising the foods, vegetables, etc. for consumption. The animals are not raised for slaughter. There are no vegetables etc. raised but he would like to continue to use that property as part of the old rural farm and rural purposes. There also a series of variances (R1 zone). We take the position that the farm is the principal use. It has two different farm houses which are used for farm workers on a seasonal basis. We would request variances from those existing conditions which have been there for 30-40 years. That is the general presentation. We look forward to the Board coming out to the site.

This is an application because it is a conditional use - D3.

Mr. Vivona clarified that they would not be using the previously approved bathrooms but would use the ones in the house.

Mr. Weber agreed.

Mr. James Brill, Applicant agreed that what was present was accurate.

Mr. Vivona asked what caused the tax assessor to change the assessment. Is it just because he is new?

Mr. Weber said as far as they could tell there was a change in the tax assessor at the same time as there was a reduction in municipal revenues.

Mr. Vivona asked if other farming industries in the areas have been affected the same way?

Mr. Weber believed that this is the first application under this market/garden ordinance which has taken a little bit of learning to get people on Board.

Mr. Vivona asked if this application was exactly the same as it was with the previous tax assessor. You are not changing anything but we need to do variances in order to get your tax status back.

Mr. Shaw believed there was also some enforcement actions over use of the second property.

Mr. Weber said that came at the same time that the tax assessor was changing. Mr. Chiccarone sent a letter and we took a letter of appeal from that.

Mr. Shaw said there was a notice of appeal filed and then that notice of appeal there would be no need for the Board to make a determination to that provided it grants you the variance relief requested.

Mr. Weber said that would be correct. That will be withdrawn and the Tax matter would be dismissed. Neither the Township or the Brill's have done much when it became apparent that we could come here first.

Mrs. Kenny said she had noticed this paperwork dated back to October 2013. Why is that?

Mr. Weber said there were questions as to whether or not he needed better interpretations from the DEP. We had retained Tom Lawtonore of Echo Sciences. As you will recall the winter of 2013 covered all this area which made it impossible for him to do his onsite review. Once that was done he proved that in some areas it is transition areas, wetlands, within 100 ft. of tributaries, etc. There was communication with the DEP saying you even need a letter of interpretation to confirm that it was not needed. We conveyed that to Mr. Ruschke. Mr. Ruschke had a number of other points that needed to be changed so he amended the plans.

Mr. Shaw said this was a D variance because it was variance from a conditional use standard. Whenever there is a variance from a conditional use standard that becomes a type of use variance. One of the conditional uses from the Market Use is that you are not supposed to have animals. Also, for your information, Mr. Michaels was not here this evening as this was just an overview. He will have a full report for our next meeting. Animals and type of plants are a problem.

Mr. Webber said this farm is horticultural. If the Board were to approve the application it would be a condition of approval. The Board may have seen that we had a neighbor in the back who had been approached when there was a question about the roosters on the main property. He was saying that sometimes he hears them so if the Board approves this application he will keep them by the pond in the back and will not increase the number of roosters(4)/peacocks(6). That was satisfactory.

When asked if the tax changes just affected lots 142 & 143 Mr. Webber replied that it also included 148. Lot 148 will have no animals. There will be horticultural products. No crops, no livestock. What is there now is what it is used for.

Mr. Shaw thought they needed the fact and information before us to see if there is anything distinguishing between the two lots as to you could deny one area.

Mr. Vivona said it was the same owner, same deed so he would assume it would just go all or nothing.

Mr. Brill said it would be a challenge to get everyone back to the back of lot 148. It is a hike. We have a wood lot management plan which was a condition that Mr. Ruschke had raised and has been reviewed and approved by the DEP as of November 6, 2014.

Mr. Vivona asked if it was mostly a wooded lot.

Mr. Brill said it was a meadow with remnants of the prior farming activities. There is a farm road that goes to the back.

Mr. Vivona asked about the animals and was advised that there have always been animals and presently there were 3 donkeys.

Mrs. Kenny - You also said you would store horticultural products. Mr. Brill said there were there now. He also noted that no customers go there.

Mr. Vivona asked if everything else on the house side has been approved. Mr. Brill said that was correct.

Mr. Vivona asked if you planted a couple of rows of tomatoes would that help.

Mr. Brill did not think so. He thought it was better to stay away from this type of planting. Once we start putting crops in you will now be dealing with a new set of regulations in terms of organic protections.

Site inspection would be at 10 a.m. on the 7th of February. The regular meeting will be held on the 19th of February.

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NEW CINGULAR WIRELESS PCS LLC (AT &T) 63 BUXTON ROAD, BLOCK: 62 LOT: 105

Mr. Shaw asked if everyone had received a copy of the complaint that which Cingular has filed against the Board. He said he would be preparing an answer to it and then we, as a Board, need to have an Executive Session to discuss the impact of the Federal Regulation which will become affective April 6th which basically impacts part of our decision. On February 11th which is our first session I would like to review Kali's report for all the variances in the last year to see if there are any other issues that we should bring to the Board's attention which we would include in a Resolution for the Annual Report; I would also like to schedule a closed session on February 11th as well where we can sit and have a more detailed discussion about what the case is and the options the Board may have in terms of how we want to approach the litigation.

Mr. Shaw said the process is that we have a decision that currently which is being appealed to the state thru the Superior Court system. Procedurally what happens is we file an answer 35 days after the complaint is served. Sometime in the beginning of February we will file and answer to it. Then about a month or so later there will a pretrial conference with the judge where will discuss various issues involved. If the Board decides at some point that it wants to settle a case, there has to be a public hearing on it. There are public interests involved and it is known as a Whispering Woods Hearing and what would happen if it got to a point where the Board after it reviewed it felt that it was appropriate to settle the matter it would then have to come back before the Board with a fully noticed hearing for whatever is being proposed with notice to the property owners involved so that they could participate in it. Again, I will go into greater detail with specifics and actions we may or may not have when we discuss in Executive Session. We want to be in a position that as the case moves forward the Board has made an educated decision about some of the factors are involved in litigation. What decisions you make certainly interact with the Township as well. It is your decision but your decisions impact the budget, policy. It is something every municipality will have to wrestle with. The new Federal FCC Regulations dealing with location. Every municipality will have to have a mechanism in place to review these things. We will not have the same discretion on this type of applications when the FCC becomes effective April 6th. It is possible someone could file a challenge to the regulations which might delay things. I will keep my ear to the ground to see what may be going on with it. We need a good discussion about what is involved in the case. After we get the answer filed that then basically has the litigation joined and anything that we do will be subject to a conditional overview because we will have filed an answer. We can assess how far that case will go when we talk about it.

Mrs. Kenny – we are supposed to be separate from the Township Committee so how do you take into consideration budgets, etc. if we are supposed to be separate?

Mr. Shaw – I am just saying that you have to bear that in mind. You have to make your own decision.

Mrs. Kenny asked if someone present information on that. How would we know what that is.

Mr. Shaw said he would certainly give you an idea of how much I think this litigation will cost. This is not the first lawsuit that we have had.

Golden River Homes, LLC
11 Sunset Drive
Block: 61 Lot: 16.

Calendar BOA 14-61-16

Carried to next meeting

Motion to Adjourn - All in favor

Respectfully submitted:

Mary Ann Fasano
Transcribing Secretary

